LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 24 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

LIBRARY
SUPREME COURT, U. S.

No. ..... 71 - 532

CITY OF DETROIT, a Municipal Corporation,
Petitioner-Defendant,

v.

SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff,

— — —

COUNTY OF WAYNE, a body politic and corporate,
Petitioner-Defendant,

v.

SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS DIVISION I

SOCOMET, INC., a New York corporation, Respondent

STEVEN I. VICTOR,
Attorney for Respondent
400 American Savings Building
24700 Northwestern Highway
Southfield, Michigan 48075
(313 354-3500

KATZ, VICTOR and YOLLES
Of Counsel

By: NORMAN D. KATZ
400 American Savings Building
24700 Northwestern Highway
Southfield, Michigan 48075
(313) 354-3500

Universal Printing Co., 1916 Brooklyn St., Detroit, Michigan 48226

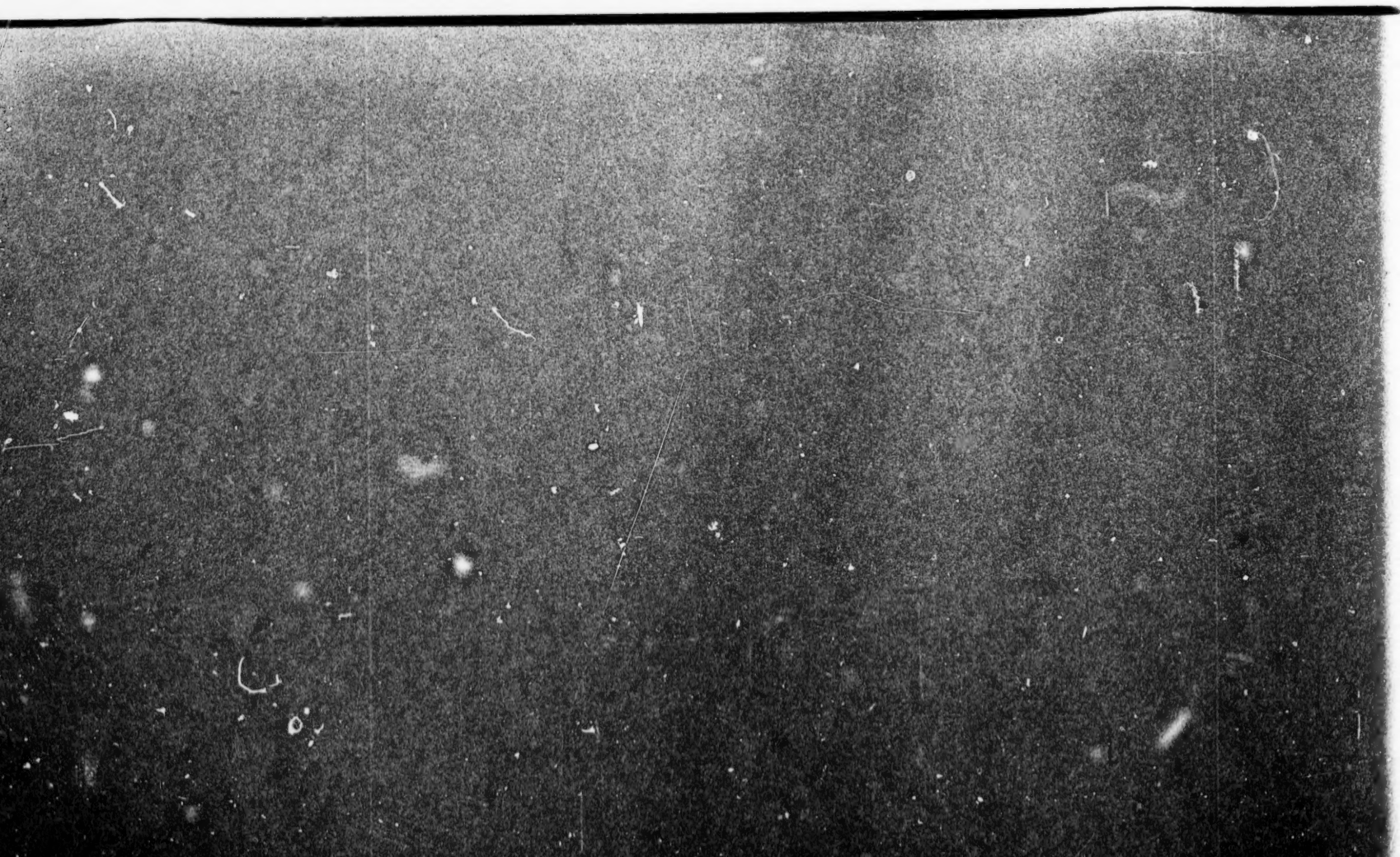

TABLE OF CONTENTS

	Page
A. Opinions Below	2
B. Jurisdiction	3
C. Questions to be Reviewed	3
D. Constitutional Provisions Involved	5
E. Statement of Facts of the Case	5
F. Argument	12
Conclusion	20
Relief	20
Exhibit A (Opinion of the Michigan Supreme Court)	21

INDEX TO AUTHORITIES

	Page
American Enamel Brick & Tile Company vs Brozek (1930), 251 Mich 7	19
Brown vs Maryland, 12 Wheat 419 (1827)	11, 12
City of Detroit vs Kenwal Products, 14 Mich App 657 (1968) (cert. denied 381 Mich 811; 396 U.S. 833 (1969))	6, 14, 18
City of Detroit vc Lake Superior Paper Company, 202 Michigan 22 (1918)	13
First National Bank vs Federal Reserve Bank, (C.A.), 2 Fed 2nd 339	19
Grand Rapids Milk Producers Association vs McGavin (1941), 295 Mich 477	19
Hooven & Allison Company vs Evatt, 324 U.S. 652, 89 Law. Ed. 1252 (1944)	14, 15, 17, 18
Janness vs Shaw (1876), 35 Mich 20	19
Low vs Austin, 80 U.S. 29 (1872)	12
Waring vs Mayor of Mobile, 75 U.S. 342, 8 Wall 110 (1869)	13
Youngstown Sheet and Tube Company vs Bowers, 358 U.S. 534 (1959)	13
U.S. Constitution, Article I, Section 10, Clause 2	5
U.S. Constitution, Article I, Section 8, Clause 3	3

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. .....

CITY OF DETROIT, a Municipal Corporation,
Petitioner-Defendant,
v.
SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff,

— — —

COUNTY OF WAYNE, a body politic and corporate,
Petitioner-Defendant,
v.
SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS DIVISION I

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondent-plaintiff (hereinafter the respondent) requests that this Court deny a writ of certiorari to review a judgment entered in the Circuit Court of Wayne County, Michigan, and affirmed by the Michigan Court of Appeals. In denying a writ of certiorari, this Court will also sustain and affirm the Supreme Court of the State of Michigan which also denied the petitioners-appellants (hereinafter petitioners) leave to appeal.

A. OPINIONS BELOW

The respondent paid persona' property taxes under protest to the petitioners and sued for refund. After a lengthy, exhaustive and detailed trial in which many exhibits were admitted, the trial judge ruled in favor of the respondent and ordered the petitioners to refund the personal property taxes paid by the respondent. Judge Montante's opinion is annexed as Petitioner's Appendix B.

The petitioners then appealed to the Michigan Court of Appeals. Briefs and records were submitted by the parties and oral arguments were had. The Michigan Court of Appeals affirmed the trial judge and ordered a refund of the taxes to the respondent. The opinion of the Michigan Court of Appeals is annexed as Petitioner's Appendix A.

The petitioners then petitioned for leave to appeal to the Michigan Supreme Court and submitted a brief to the Michigan Supreme Court. The respondent answered the petition for leave ot appeal and filed a brief in opposition. The Michigan Supreme Court denied leave to appeal and found that the petitioners did not "have a meritorious basis for appeal, or that the decision of the Court of Appeals was clearly erroneous." The decision of the Michigan Supreme Court is annexed hereto as Exhibit A.

The petitioners now have requested a writ of certiorari from this Court, claiming a federal question is involved. Respondent objects and asks this Court to deny the petition for writ of certiorari.

B. JURISDICTION

(1) The petitioners are appealing judgments entered in the Wayne County, Michigan, Circuit Court which vacated certain assessments placed on the personal property tax rolls of the City of Detroit. The judgments ordered refund of the taxes paid under protest.

The Wayne County Circuit Court, being the trial court, and the Michigan Court of Appeals held that the respondent was entitled to immunity by virtue of Article I, Section 10, Clause 2 of the Constitution of the United States. The Michigan Supreme Court denied leave to appeal and affirmed both the trial court and the intermediate appellate court.

(2) Jurisdiction of this Court to deny the writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 USCA 1257 (3).

(3) This brief in opposition to a petition for writ of certiorari is submitted in behalf of Socomet, Inc., the respondent.

C. QUESTIONS TO BE REVIEWED

(1) Is Socomet the importer or the efficient cause of the importation entitled to the immunity from personal property taxation?

(a) The trial court answered Yes.

(b) The Michigan Court of Appeals answered Yes.

(c) The Michigan Supreme Court said Yes.

(2) Is the importer or the efficient cause of the importation entitled to immunity from the local personal property taxes so long as the imported goods are held exclusively for resale and are in the original package?

(a) The trial court said Yes.

(b) The Michigan Court of Appeals said Yes.

(c) The Michigan Supreme Court said Yes.

(3) Is the federal law granting immunity to the importer or to the efficient cause of the importation clear and unambiguous?

(a) The trial court said Yes.

(b) The Michigan Court of Appeals said Yes.

(c) The Michigan Supreme Court said Yes.

(4) Has there been an erroneous application of either facts or of law?

(a) The trial court made precise findings of fact and law in favor of the respondent.

(b) The Michigan Court of Appeals affirmed the trial court and said there has been no erroneous application of law or facts.

(c) The Michigan Supreme Court has said there is no erroneous application of law or facts in the case at bar.

(5) If the federal law is clear and unambiguous and if there has not been an erroneous application of either law or of facts, should this Court grant certiorari?

(a) The Michigan Supreme Court said No.

(b) The respondent says No.

D. CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 10, Clause 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

E. STATEMENT OF FACTS OF THE CASE

The respondent imported steel from Japan which it stored in Detroit in the original packages or bundles on the personal property tax lien date. The respondent is not a processor or user and held the steel exclusively for resale. The respondent filed a City of Detroit personal property tax return for the years 1967, 1968 and 1969 and claimed the imported steel immune from the personal property tax pursuant to the provisions of the United States Constitution (Article I, Section 8, Clause 3, and Article I, Section 10, Clause 2). The City of Detroit and the Michigan State Tax Commission disallowed the claim of immunity and placed the steel on the personal property tax assessment rolls for the City of Detroit. The State Tax Commission, in making its determination, placed the imported steel on the tax rolls on February 29, 1968, which was prior to the time that the State Tax Commission had been reversed in the case of *City of Detroit vs Kenwal Products*, 14 Mich App 657 (1968); certiorari de-

nied 381 Mich 811 (1969); certiorari also denied 396 U.S. 833 (1969).

The respondent paid the taxes to the City of Detroit and to the County of Wayne under protest and sued in the Circuit Court for the recovery of the taxes so paid.

All of the cases were consolidated for trial. The trial was limited to the 1967 taxes, with the understanding that the other cases would follow the result of the 1967 case unless separate issues were raised.

The sole issue is whether the respondent is the importer or the efficient cause of the importation entitled to the Constitutional immunity as defined by the United States Supreme Court is a long series of cases. There are no other issues. All of the parties agree that:

(1) The steel originated in Japan.

(2) It was in the original bundle on the assessment date.

(3) That the respondent is not a processer or user.

(4) That there are no procedural irregularities which would prevent a refund.

(5) That all of the exhibits which were admitted, were admitted by stipulation and the agreement of the parties and without objection.

The steel in question arrived in Detroit as a result of two types of transactions. Judge James Montante of the Wayne County Circuit Court found that in both types of transaction, the respondent was the importer within the Constitutional meaning and ordered refund of the taxes paid by the respondent to the City of Detroit and to the County of Wayne in the approximate amount of

$30,000. Judge Montante's opinion is annexed as Petitioner's Appendix B.

The City of Detroit and the County of Wayne appealed Judge Montante's decision to the Michigan Court of Appeals. The Michigan Court of Appeals affirmed the Circuit Court. That opinion is annexed as Petitioner's Appendix A.

The petitioners then asked for leave to appeal to the Michigan Supreme Court. The Michigan Supreme Court denied leave to appeal, " . . . for the reasons that the defendants and appellants had failed to persuade the court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous." That opinion of the Michigan Supreme Court is annexed hereto as Exhibit A.

The petitioners have now petitioned this Court for writ of certiorari. The respondent opposes the granting of a writ of certiorari.

One type of transaction was the so-called Advance Steel Company-Gosho transaction. In that transaction, Advance Steel Company acted as agent for the respondent in purchasing the steel from Gosho. The respondent was an undisclosed principal, but the agency was clearly documented as between the respondent and Advance Steel Company.

The petitioners denied the agency between the respondent and Advance Steel and called as their witness the president of Advance Steel. The documents establishing the the agency, Exhibits 2 ,A, 2 B and 2 C, were admitted and the president of Advance Steel stated on both direct examination and on cross-examination that Advance Steel acted as an agent for the respondent in acquiring the

steel. All of the testimony and exhibits concerning the Gosho transaction with Advance show the following:

(1) That the respondent financed the entire purchase which ran to several million dollars.

(2) From the time the respondent paid the foreign producer and while the merchandise was still in Japan, the documents of title were always within the control of the respondent.

(3) That Advance Steel made the purchase only after Advance Steel agreed to act as agent for the respondent.

(4) That the purchase was for the respondent's account.

(5) Advance Steel never claimed any right, title or interest in the steel and never used any of its own funds.

(6) That at the time the agency was created, the steel had not been fabricated, produced or ordered in Japan.

(7) That the specifications for the contracted tonnage (gauge, size, etc.) came from the respondent as it determined its needs from time to time and the Japanese producers produced those specifications.

(8) The trial judge made a specific finding of fact that an agency existed, see Findings of Fact, Numbers 10 and 11, (Appendix B of Petitioner's Brief).

(9) The trial judge made a specfic conclusion of law that Advance Steel acted as agent for the respondent, see Conclusions of Law, Numbers 15 and 16, (Appendix B of Petitioner's Brief).

(10) That respondent was the first and only owner of the steel when it arrived in the United States.

(11) That the respondent had the exclusive control of the steel, title and documents from the time the foreign producer was paid and while the steel was in Japan.

The petitioners have been trying to impeach their witness, the president of Advance Steel ever since he testified. The petitioners have also sought to disregard the documents establishing the agency, Exhibits 2 A, 2 B and 2 C. The said exhibits were submitted by stipulation, were normal business records of both the respondent and the petitioners' witness, substantiate the original claim of immunity and confirm the oral testimony of the petitioners' own witness. The said documents had also been submitted to the petitioners at the time the claim for immunity was originally investigated administratively. Like all other documents that do not fit petitioners' theories, Exhibits 2 A, 2 B and 2 C were ignored by the petitioners.

The other type of transaction involved purchases by a sister corporation of the respondent known as Philipp Brothers Far East (hereinafter referred to as "Far East"). The undisputed testimony in this type of transaction shows the following:

(1) All of the stock of the respondent and of Far East was held by the same parent corporation.

(2) The officers and directors serving one corporation also served the other corporation.

(3) All salaries were paid by the parent corporation.

(4) The respondent is the selling arm for steel in the United States.

(5) The respondent is the party which determines through its agents how much steel should be purchased, the specifications of the steel, the port of entry and the time of entry.

(6) That Far East places orders in Japan for the ultimate account of the respondent which, in turn, resells the steel in the United States.

(7) That all purchases are financed by the parent corporation.

(8) That the respondent was the first and only owner of the steel when it arrived in the United States.

(9) That title to the steel vested in the respondent before the steel arrived in the United States and in most cases before it left the foreign port, but in all cases the respondent had control of the title documents from the time that the foreign producer received payment in the foreign country by satisfaction of a letter of credit supplied by the parent corporation.

(10) That all letters of credit were always satisfied before the steel left the foreign producer's control.

(11) That all activities of Far East and of the respondent were for the benefit of the same parent corporation.

(12) The trial court made a specific finding of fact that Far East acted as agent for the respondent in acquiring the steel in Japan and in fact was an

alter ego of the respondent, see Finding of Fact, Number 18. (Appendix B of Petitioner's Brief)

(13) The trial court made a specific conclusion of law that Far East was the agent of and the alter ego of the respondent, see Conclusion of Law, Number 17. (Appendix B of Petitioner's Brief)

The Wayne County Circuit Court concluded that under the federal law, (enunciated in a series of United States Supreme Court decisions interpreting the Constitution and tracing all the way back to Chief Justice John Marshall's landmark decision in *Brown vs Maryland,* 12 Wheat 419 (1827) the plaintiff sustained the burden of proof and showed that it was the importer or the efficient cause of the importation, was not a processer and was entitled to immunity from personal property taxation in both types of cases. In reaching his conclusion, the Circuit Judge filed a 23-page opinion, detailing his findings of fact and conclusions of law, which opinion is annexed as Appendix B of Petitioner's Brief. Judgments were entered in six of the cases (being the 1967 tax case) based upon the said opinion.

The petitioners appealed those judgments to the Michigan Court of Appeals. The Michigan Court of Appeals affirmed. Thereafter, the Michigan Supreme Court denied the petitioners leave to appeal.

The petitioners are now seeking a writ of certiorari in this Court. The respondent opposes the petition for writ of certiorari.

F. ARGUMENT

Both the Circuit Court, who conducted the trial, and the Michigan Court of Appeals, which reviewed the same, have stated that the respondent carried the burden of proof and did establish the fact that respondent is the importer or the efficient cause of the importation in the Constitutional sense. As such, both courts below have stated that the respondent is entitled to immunity from the personal property tax of the City of Detroit and the County of Wayne. Since the federal law is settled, clear and unambiguous, the respondent sees no reason why a writ of certiorari should be granted by this Court. Furthermore, there is obviously no misapplication of the law or the facts in the case at bar.

The Court has ruled many times on how to determine who is the importer entitled to immunity from taxation by local governments. The original landmark case was decided by Chief Justice John Marshall in *Brown vs Maryland,* 12 Wheat 419 (1827). The case enunciated the famous original package doctrine and denied to the State the right to tax imported goods still in the hands of the importer and in the original package.

In the case at bar, the steel was in the original bundles on the lien date and was still owned by the first party who caused the steel to be brought into the United States. See conclusions of Law, Number 2 (Appendix A).

Brown was followed by *Low vs Austin,* 80 U.S. 29 (1872), which stated that an ad valorem tax (the personal property tax in the case at bar), could not be levied on goods which had not yet lost their character as imports. In the case at bar, the goods were still in the original

bundles, were not committed to any use, were still held by the respondent who caused the importation and were held by the respondent exclusively for resale without further processing by the respondent. The Michigan Supreme Court has also ruled in a similar case that imported newsprint stored in a warehouse on the personal property tax lien date is still immune from the personal property tax. See *City of Detroit vs Lake Superior Paper Company,* 202 Michigan 22 (1918).

The cases of *Waring vs. Mayor of Mobile,* 75 U.S. 342, 8 Wall 110 (1869) and *Youngstown Sheet and Tube Company vs. Bowers,* 358 U.S. 534 (1959), cited by the petitioners are not applicable to the case at bar. In *Waring,* the salt in question was brought into the United States as ship ballast and was sold by the ship owner to Waring. This Court correctly held in *Waring* that Waring was the purchaser from the importer (the ship captain) and was, therefore, subject to the state tax. In the case at bar, the respondent caused the importation by ordering the steel before it was fabricated in Japan. The respondent is not, therefore, a purchaser from the importer.

In *Youngstown, supra,* the imported goods were committed to a manufacturing process by the importer and the entire case turned on when an importer for his own use so acts on the goods as to become subject to local taxation. The split court had held in *Youngstown* that both Youngstown Sheet and U.S. Plywood had so acted upon the imported goods and so committed them to the manufacturing process as to render those goods subject to local taxation. In the case at bar, the respondent did not import for its own use, does not manufacture, does not process and does hold the steel in the original bundles exclusively for re-sale.

This brings the history of the original package doctrine as it applies to the case at bar to the case of *Hooven & Allison Company vs. Evatt,* 324 U.S. 652, 89 Law. Ed. 1252 (1944), which the respondent believes is controlling in the case at bar. No court has had any difficulty in determining who the importer is in accordance with the guidelines set down in *Hooven. Hooven* has since been followed in an almost identical steel importation case in *City of Detroit vs Kenwal Products,* 14 Mich. App. 657 (1966); certiorari denied in 381 Mich. 811 (1969); certiorari also denied 396 U.S. 833 (1969). Thus, *Hooven* has been reaffirmed by this Court as late as October 16, 1969.

Hooven discusses in detail what the guidelines are for the determination of who is the importer. On Page 661, Hooven laid down the rule that if the taxpayer's " . . . contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country, which is importation," . . . then that party (the respondent herein) is the importer entitled to the immunity under the Constitution from personal property taxation.

In the case at bar the respondent was the party that caused all the importation by placing the orders which were to be produced, billed and shipped in the foreign countries. All the risk of loss was upon the respondent. All title documents were under the control of the respondent from the time that the foreign producer was paid by satisfaction of the letter of credit at the time the merchandise left the control of the foreign producer in Japan.

At Page 662 in *Hooven,* the Court said,

> "For the purpose of determining whether petitioner was the importer in the constitutional sense, it is immaterial whether the title to the merchandise imported vested in him who caused it to be brought

> to this country at the time of shipment or only after its arrival here."

The Court also went on to say at the same place,

> "For in determining the meaning and application of the constitutional provision, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

It is precisely this stubborn refusal on the part of the petitioners to look at the essential nature of the transaction, which is well documented, that has caused the respondent all of this needless litigation. This stubborn refusal has necessitated this suit and now this appeal on the part of the petitioners. The record is complete and detailed as to the essential nature of the transaction and the facts of commercial life.

In this connection, this Court said in *Hooven* at Page 664,

> "It is evident that the constitutional prohibition envisages the present transaction, quite as much as if the petitioner had sent his own agent abroad where he had purchased and paid for the merchandise and shipped it to petitioner in this country. The purpose and result of the transaction are the same in either case."

This is precisely what occurred when the respondent instructed its sister corporation, Far East, to negotiate the purchase of steel in Japan which the respondent would

sell in the United States. In fact, the case at bar is even stronger, because both the plaintiff and Far East are wholly owned subsidiaries of the same parent; let alone having Far East act as agent for the respondent. An *alter ego* situation is an *a fortiori* situation and not a weaker case as the petitioners would have this Court believe.

In the Advance Steel situation, the respondent did act through an agent which was not a sister corporation—Advance Steel. Any fair reading of the testimony and Exhibits 2 A and 2 B and 2 C clearly shows the existence of that agency. The agency was established by documentation, by business records and by the testimony of the petitioners' own witness, the president of Advance Steel. The petitioners should not be allowed to impeach their own witness. Nor should they be allowed to disregard, impeach or ignore the exhibits which were admitted by agreement of the parties at the time of the trial. For the petitioners to say (as they did on Page 11) that the agency is "generally unsupported" and "contradicted by documents" is sheer nonsense, see Findings of Fact, Numbers 10 and 11, in the trial judge's opinion—Appendix B of Petitioners' Brief—and see Exhibits 2 A, 2 B and 2 C.

The petitioners' claim that *Hooven & Allison*, supra, requires a named principal to entitle the respondent to immunity is simply not true. A reading of *Hooven* will show that this Court discussed the fact that the fabricator exporter in the foreign country may operate through a trading company as its agent. The agent for the farbicator acts for a named principal. There is nothing in the case which requires the importer to deal direct or reveal his identity. Translated into the terms of the case at bar, the agents of the respondent (Advance Steel

or Far East) would place the order either with a trading company or with the manufacturer. Advance and Far East did not have to reveal for whom they were acting. This, in fact, was done when Advance Steel placed its order with a party by the name of Milton Stark whose named principal was Gosho. Gosho was the manufacturer-exporter. Nothing in *Hooven* refers to the respondent as a named or hidden principal of Advance Steel. Please refer to the bottom of page 659 and the top of Page 660 of the *Hooven* case in regard thereto.

At Page 664, the Court in *Hooven* said,

> "It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the efficient cause of its importation, the purpose and effect of which was petitioner's acquisition of the merchandise . . . "

Since the respondent is the efficient cause of the importation by all the rules laid down in *Hooven*, the respondent is the importer entitled to the immunity from the personal property taxes. This applies both to the steel which respondent acquired through Far East and through Advance Steel.

So long as the goods are in the original bundles, held by the importer for re-sale (especially since the respondent admittedly does no processing), no tax such as petitioners seek to levy here may be imposed. Thus this case is to be distinguished from *Youngstown, supra*. As the Court said at Page 666 in *Hooven*,

> "Indeed, goods imported, while they remain in the hands of the importer, in the form and shape in which they were brought into the country, can in no just sense be regarded as a part of that mass of property in the state usually taxed for the support of state government."

The record clearly shows that the respondent is the efficient cause of importation and is not the purchaser from an importer. Mr. Taylor, the chief accountant of the Board of Assessors, all but admitted the same. All of the testimony and all of the documentation shows that the respondent is the efficient cause of the importation. The burden of proof was easily carried at the trial. Judge Montante of the Wayne County Circuit Court and the Michigan Court of Appeals so felt as well. The Michigan Supreme Court felt so certain as to the law that it stated that the petitioners did not "have a meritorious basis for appeal." The appellants cannot shut their eyes to the facts of commercial life and refuse to look at the relationship of the plaintiff to the steel in question in these transactions. In fact, the Court in *Hooven* said at Page 658,

> "That relationship is to be ascertained by reference to *all the circumstances* attending the importation, particularly as shown by the long established course of business by which petitioner's supply of fibers has been brought into the country." (emphasis supplied)

In the long run, the position of the petitioners would be most damaging to the Port of Detroit, as the steel could easily be diverted by the respondent and others similarly situated to nearby ports such as Toledo, to the great detriment of the Port of Detroit. Thus, the petitioners' position is not only constitutionally erroneous, it is also shortsighted from a commercial point of view.

Also, see *Kenwal, supra,* where the Michigan Court of Appeals said at Page 661 (which decision was upheld when this Court denied certiorari):

> "In determining who is the efficient cause of importation in the constitutional sense, we must look beyond matters of form to the substance of the

> transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in Hooven, supra, 661, was the fact that performance of the contract called for and necessarily resulted in importation of the merchandise."

The Michigan Court of Appeals, in the case at bar, has ruled that the respondent is entitled, as against the petitioners and all others, to the benefits of the acts of Advance Steel which acted as its agent and to the benefits of the acts of its sister corporation, Far East, which acted either as an agent or as an alter ego. There is no dispute that Advance Steel and Far East obligated the foreign producers to sell the steel, ship the goods and make delivery in consideration of the obligation to pay the foreign producer and that all this was done at the instigation and direction of the respondent. Under Michigan law, the respondent is entitled to the benefits of those contracts made by its agents even if the appellee is an undisclosed principal. See *Grand Rapids Milk Producers Association vs. McGavin,* (1941), 295 Mich 477, *American Enamel Brick & Tile Company vs Brozek* (1930), 251 Mich 7, *Janness vs. Shaw* (1876), 35 Mich 20. Also see *First National Bank vs Federal Reserve Bank,* (C.A.), 2 Fed 2nd 339.

The Circuit Court had an opportunity to hear the witness and ruled in favor of the respondent; the Court of Appeals had the transcript in its possession and also ruled in favor of the respondent. The Michigan Supreme Court denied leave to appeal.

Since the respondent is entitled to the benefits of the acts of its agents and/or alter egoes and since it is clearly the importer, this Court should not grant a writ of certiorari. The federal law is settled and unambiguous and the application of law and facts in the case is correct. Under the circumstances, therefore, we see no reason why

this Court should grant a writ of certiorari after two courts have already considered the merits and have made precise findings of fact and law and ruled in favor of the respondent.

CONCLUSION

For the reasons above stated, based upon the facts and the law, we feel that this Court should not grant a writ of certiorari in the case at bar.

RELIEF

Wherefore, the respondent respectfully prays that the petition for writ of certiorari be denied in these consolidated actions.

Respectfully submitted,

SOCOMET, INC.,
A New York Corporation
Respondent

STEVEN I. VICTOR,
Attorney for Respondent
400 American Savings Building
24700 Northwestern Highway
Southfield, Michigan 48075
(313) 354-3500

KATZ, VICTOR AND YOLLES
Of Counsel

By: Norman D. Katz
400 American Savings Building
24700 Northwestern Highway
Southfield, Michigan 48075
(313) 354-3500

EXHIBIT A

OPINION OF THE MICHIGAN SUPREME COURT

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the 19th day of July in the year of our Lord one thousand nine hundred and seventy-one.

Present: the Honorable Thomas M. Kavanagh, Chief Justice, Eugene F. Black, Paul L. Adams, Thomas E. Brennan, Thomas G. Kavanagh, John B. Swainson, G. Mennen Williams, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and the same is hereby denied, for the reasons that defendants and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 21st day of July in the year of our Lord one thousand nine hundred and seventy-one.

Donald F. Winters,
Clerk.